IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

MISC. PETITION NO.3 OF 2006

Lalita Shyam Nayampalli. ..Petitioner.

Mr. Vishal Seth i/by Crawford Bayely & Co. for the Petitioner.

CORAM : R.S. MOHITE,J.
DATED : 19/8/2006.

P.C.

1. Heard Advocate for the petitioner and perused the papers.

2. This is an application made by the petitioner who is the mother of a minor child by name Sakshi. The prayer in the petition is for appointment of petitioner as a guardian of the person and property of the minor and for permission to transfer the share of the minor in the suit property and for that purpose to execute the sale deed and other documents as may be necessary and appropriate and to utilise the proceeds of the sale deed. It is contended that the petitioner is widow and her husband who died intestate on 18.2.2002 had 25% share in the property which was a bungalow of approximate area of 4000sq.ft. situated at Khar. The bungalow is being occupied by the family members

including two brothers of the deceased husband Shyam Sunderao Nayampalli whose names are Jagdish, Ashok and Laxmi. It appears that the bungalow is of ground plus first floor and is being occupied by Jagdish and Ashok who are two surviving sons of deceased Shyam Sunderrao and the members of their family as well as petitioner and her children. It further appears that the family has been approached by one R.S. Builders and a development agreement dated 9.1.2006 has been executed between all the co-sharers of the family agreeing to develop the property. Since one of the co-owner is minor, the development agreement records that since one of the co owner (Sakshi) is minor and provides that the co-owners shall secure requisite permission from the Bombay High Court for dealing with the minor's interest. Accordingly, the present petition has been moved.

3. It is clear from the development agreement that four children of Sunderrao are each entitled one flat of adm. 1300sq.ft. on the 5th or 6th floor of the building as specified in Clause 7 of the said development agreement. It is also clear that apart from this an amount of Rs.10.87/- Crores is the total monetary consideration to be paid by the developer to all the co-owners. The agreement provides that after adjusting the cost of construction which is specified as Rs.36,00,000/-, total amount payable to all the co-owners shall be

Rs.10.51/-Crores. Out of this amount the share of the minor is specified in the agreement as Rs.65,68,750/-. It is mentioned in the petition that the amount which is being offered is a good offer. The market price and the flats have been valued for a lesser amount by the valuer appointed by the family. The affidavits of other co sharers have been filed in this court and they have stated in their affidavits that they have no objection if the petition is made absolute. The affidavit of one of the co-owner Ashok has been filed through his power of attorney who is authorised to sign for him and who is his wife. The petitioner is the mother of the minor. I find no difficulty in appointing her as guardian of the minor and for dealing with the interest of the minor's share subject to the conditions as contained herein below.

4. Accordingly, the petition is made absolute in terms of prayer clause (a), (b), (c) and (d). There will be permission to transfer and sell the minor's share in the property specified in Exh.A to the petition subject to the condition that the sale will not be less than the amount mentioned in the development agreement and the amount of Rs.65,68,750/- which is the share of the minor, less tax liability shall be deposited by the developer in this court by a pay order in the name of the Accounts Officer of the High Court. The amount

which would be deposited in this court will be invested by the Accounts Officer in a fixed deposit in any nationalised bank initially for a period of three years. The petitioner will have permission to execute such requisite documents to complete the sale transaction. There will be liberty to apply in case of any difficulty. Petition stands disposed off.

(R. S. MOHITE, J.)